

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARIA ENCAR ARNOLD,

Plaintiff,

v.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION,

Defendant.

Case No. 1:20-cv-01372-NONE-BAM

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S
APPLICATIONS FOR LEAVE TO PROCEED
IN FORMA PAUPERIS BE DENIED

(Docs. 2, 4)

FOURTEEN (14) DAY DEADLINE

Plaintiff Maria Encar Arnold ("Plaintiff"), proceeding pro se in this civil matter, initiated this action on September 28, 2020. (Doc. 1). On the same day, Plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. (Doc. 2). Plaintiff's application was insufficient for the Court to determine if she is entitled to proceed without prepayment of fees in this action. Accordingly, the Court directed Plaintiff to complete and file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) – AO 239. (Doc. 3.)

On October 26, 2020, Plaintiff filed the Long Form application, along with a written response and attachments. (Doc. 4.) According to the application, response, and attachments, Plaintiff expects to receive \$1,893 per month in Social Security benefits. (*Id.* at 2, 9.) She further identifies that she receives \$900 per month in child support for her two daughters, along with \$946 in Social Security benefits for her two children. (*Id.* at 1-2, 8.) She also has expenses for two cars

1 and makes payments for two homes. (*Id.* at 3-5, 8.) Plaintiff estimates her monthly expenses to
2 total \$3,046.00.

3 Having considered Plaintiff's Long Form application and attachments, and the statements
4 made therein, the Court finds that she has not made the showing required by section 1915(a) that
5 she is unable to pay the required fees for this action. At a minimum, Plaintiff's application reveals
6 that she receives monthly Social Security benefits in the amount of \$1,893.00, along with child
7 support in the amount of \$900.00 and Social Security benefits for her children in the amount of
8 \$946.00. This results in a monthly income of approximately \$3,739.00 and an annual income of
9 \$44,868.00.

10 Many courts look to the federal poverty guidelines set by the United States Department of
11 Health and Human Services ("HHS") as a guidepost in evaluating in forma pauperis applications.
12 *See Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 n.5 (11th Cir. 2004); *Boulas v. United*
13 *States Postal Serv.*, No. 1:18-cv-01163-LJO-BAM, 2018 WL 6615075, at *1 (E.D. Cal. Nov. 1,
14 2018) (applying federal poverty guidelines to in forma pauperis application). For a family of three,
15 the present poverty guideline is \$21,720.00. *See U.S. Federal Poverty Guidelines Used to*
16 *Determine Financial Eligibility for Certain Federal Programs*, available at
17 <https://aspe.hhs.gov/poverty-guidelines> (last visited November 10, 2020). Plaintiff's estimated
18 annual income exceeds this amount.¹ Further, assuming Plaintiff receives approximately \$3,739.00
19 per month, her income is above her stated monthly expenses. *Lopez-Ruiz v. Tripler Army Med.*
20 *Ctr.'s Postdoctoral Fellowship in Clinical Psychology*, No. CV. 11-0066 JMS/BMK, 2011 WL
21 486952, at *1 (D. Haw. Feb. 4, 2011) (denying in forma pauperis status to plaintiff whose income
22 was \$1,800 per month and whose monthly income exceeded monthly expenses).

23 Accordingly, the Court HEREBY RECOMMENDS that:

- 24 1. Plaintiff's applications to proceed without prepayment of fees and costs (Docs. 2
25 and 4) be DENIED; and
26 2. Plaintiff be required to pay the \$400.00 filing fee in full to proceed with this

27 _____
28 ¹ This is true even if Plaintiff's income is limited to \$1,893.00 in monthly Social Security
payments.

1 action.

2 These findings and recommendations are submitted to the United States District Judge
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
4 **(14) days** after being served with these findings and recommendations, Plaintiff may file written
5 objections with the Court. Such a document should be captioned “Objections to Magistrate
6 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
7 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d
8 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
9 IT IS SO ORDERED.

10 Dated: November 10, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE